

COMMISSIONERS' ORDINANCE NO. O-26-22

AN ORDINANCE AMENDING SECTION 96.067 OF THE COVINGTON CODE OF ORDINANCES REQUIRING FRANCHISEES TO INFORM CITY OF LEASES OF UTILITY POLES AND TO REQUIRE FRANCHISEES TO REMOVE LESSEE'S EQUIPMENT FROM POLES WHEN DIRECTED

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WHEREAS, certain utility companies have operated in the City of Covington pursuant to franchise agreements with the City and those agreements include the right to keep and maintain utility poles in the public right of way;

WHEREAS, utility franchisees of the City have reached leases with certain companies for use of the franchisee's utility poles which exist in the public right of way;

WHEREAS, the utility franchisees with agreements with Lessees charge a fee to the Lessees and receive compensation from these sub-leases;

WHEREAS, the utility franchisees have not informed the City of the existence of Lessees, the identity of those Lessees, and contact or identification information of the Lessees;

WHEREAS, when utility franchisees have been directed to remove their equipment from utility poles and place them underground, the franchisees have claimed to be unable to direct removal of the equipment of their Lessees from the poles;

WHEREAS, Lessees using utility poles in the public right of way do so only with the permission of, and by paying a fee to, the franchisee;

WHEREAS, Lessees using utility poles in the public right of way have no direct relationship with the City even though their equipment is in the public right of way;

NOW THEREFORE,

BE IT ORDERED BY THE BOARD OF COMMISSIONERS OF THE CITY OF COVINGTON, KENTON COUNTY, KENTUCKY:

Section 1

Section 96.067 of the Covington Code of Ordinances is amended to read as follows:

§ 96.067 INSTALLATION, RELOCATION OR DISCONTINUATION OF FACILITIES.

(A) Provisions apply unless direct conflict exists. The provisions of this section shall apply unless they directly conflict with a tariff, state or federal law, or the provisions of the applicant's franchise agreement with the city. This section shall not be interpreted to impair the ability of a registrant to perform work not requiring a permit unless a public safety concern would arise if such work were to be performed.

(B) General application. Upon the written notice of and at the direction of the City Manager, a registrant shall relocate or remove facilities, or rearrange aerial facilities, if required by a tariff, state or federal law, a franchise agreement with the city or the provisions of this subchapter.

(C) Coordination. To the extent reasonably possible, registrants shall coordinate the installation, relocation and removal of their facilities with each other in order to avoid issues with respect to the location of facilities within the right-of-way.

(D) Procedure. The City Manager shall notify the applicant if the City Manager determines that a facility may not be installed as requested by the applicant. Upon determining that a facility may not be installed as requested, the City Manager shall provide written notice to the applicant as early as practicable and in conformity with any specific applicable notice requirement. The notice shall contain a description of the area affected as well as the reason for the City Manager's determination. The City Manager may issue a permit that is contingent upon certain condition(s) being fulfilled with respect to the criteria contained below.

(E) Reservation of rights. Notwithstanding any other provision in this subchapter, the city specifically reserves the right to order the removal or relocation of any facility installed after the effective date of this chapter, at no cost to the city for which the appropriate permit was not obtained.

(F) Preclusion on cutting newly paved surfaces.

(1) If any street is designated for resurfacing or reconstruction by the city on the list maintained pursuant to this subchapter, the registrant shall make any extensions, changes or installations of or to its facilities ahead of such activity. The registrant shall

notify the City Manager no less than 45 days prior to the city's anticipated bid date of its desire to perform such extensions, changes or installations, and may be allowed up to 90 additional days to complete the work.

(2) If any street is about to be constructed, reconstructed, widened, altered or paved by the city, the City Manager shall provide notice to registrants, and the registrant shall make any extensions, changes or installations of or to its facilities ahead of such activity. Depending on the amount of such extensions, changes or installations to be performed, the registrant may be allowed up to 120 days to complete the work, which the City Manager may extend for good cause. It is expected that the registrant shall not disturb the city's improvements within the following two-year period, so as to minimize the premature degradation of the right-of-way caused by multiple alterations and surface cuts. Upon a registrant's showing of undue hardship or emergency, the City Manager may grant permission for limited disturbance of the newly paved surface within the two-year period. The registrant shall in those instances comply with all other relevant provisions of this chapter pertaining to restoration of the right-of-way.

(G) Relocation.

(1) Generally. Upon providing reasonable advanced written notice to the registrant or other responsible party, the City Manager may order the relocation or rearrangement of any facility, in his or her reasonable discretion and in good faith, if any of the following arise with respect to that facility:

(a) The relocation or rearrangement is necessary for the purpose of public safety;

(b) The relocation or rearrangement is required by a tariff, state or federal law, or a franchise agreement with the city;

(c) The relocation or rearrangement is necessary to assist in the installation of facilities by another registrant or permittee;

(d) The relocation or rearrangement is necessary as a result of the city adopting a planned public project or policy requiring that facilities be relocated; and

(e) So as to conform to the established grade or line of a right-of-way or so as not to interfere with public improvements whenever the city shall grade, regrade, construct, reconstruct, widen or alter any right-of-way, or construct, reconstruct, repair, maintain or alter a public improvement, including, but not limited to, storm sewers, or street lights therein.

(2) Coordination. The city shall coordinate the new location with the registrant or permittee as part of the permitting process.

(3) Relocation underground. If, as a result of a planned public project, a registrant is required to relocate facilities that were previously and lawfully located above-ground, and the city requests, as part of the relocation, that the facilities be relocated to underground, the city may bear the cost for the difference in cost between an aerial and underground facility of the same type, unless an agreement to the contrary is otherwise entered into by the appropriate parties and unless applicable state law requires otherwise.

(4) Relocation for public safety reasons. If the basis for the city ordering the relocation of a facility is a public safety concern, the registrant shall relocate the facility at no cost to the city.

(5) Relocations to assist in the placement of other facilities. If a registrant is required to relocate facilities to assist in the installation of facilities by another registrant or permittee, the party seeking to install the facilities shall bear the costs of said relocation, unless an agreement to the contrary is otherwise entered into by the appropriate parties.

(6) Relocations where the cost is borne by the city. Notwithstanding any language in this subchapter to the contrary, unless an agreement to the contrary is otherwise entered into by the appropriate parties, the cost of the following types of relocations shall be borne by the city:

(a) The relocation is the result of the city adopting a plan or policy requiring that facilities be placed underground in that location, if, at the time the facility was installed, such a plan was not in place;

(b) The location in which the facility is currently sited was not a part of the right-of-way or was not otherwise owned or controlled by the city at the time the facility was installed;

(c) The city has previously ordered that the facility be relocated to comply with a public improvement project, the registrant or party has substantially complied with such order, and the city then orders the registrant or party to relocate that facility to a different area as part of the same project; or

(d) The city orders the relocation of a facility to accommodate a public improvement project, and the construction of such project is subsequently terminated by the city.

(H) Lessees

(1) Any franchisee of the City of Covington that chooses to lease any utility pole to another entity, or which allows any other entity to use a utility pole in the public right of way, shall:

(a) Require in any agreement with a Lessee that it will remove its equipment from the utility pole when directed to do so by the City of Covington or by the franchisee;

(b) Require removal of the Lessee's equipment from the pole at the expense of the franchisee or the Lessee as the parties might agree;

(c) Require that the Lessee give identifying information to the City of Covington including its name, address for receiving regular U.S. Mail, e-mail address; telephone number of its office which responds to existence, installation, repair, maintenance, and removal of equipment which exists on utility poles in the public right of way;

(d) Require that the Lessee be duly authorized to do business in the Commonwealth of Kentucky and be subject to service of process in the Commonwealth;

(e) Require that the Lessee be duly authorized and licensed to do business in the City of Covington and that it pay and stay current on all license fees and occupational taxes in the City.

(2) The franchisee will contact and require its Lessees to remove their equipment from any utility pole in the public right of way when directed to do so by the City and/or the franchisee.

(3) Any refusal or failure of a franchisee to abide by the terms of the requirements of this ordinance will subject the franchisee to pay any and all expenses incurred by the City of Covington when any Lessee's equipment is removed from a utility pole in a public right of way. The expenses which the franchisee will be required to pay will include the attorneys fees and any costs incurred in defending any lawsuits brought by the Lessee for removal of the equipment and any

damages of any kind, including punitive damages, from removal of the equipment, including all damages and requited by § 96.065.

(4) Any franchisee that leases use of utility poles in the public right of way to other entities must keep record of any such entity, its identifying information (as described above) which pole or poles it is using, the amount it is paying the franchisee for use of the pole, and all other terms of the lease for use of the pole. These records must be made available upon request by the City.

[(H)] **(I)** Discontinuance of use.

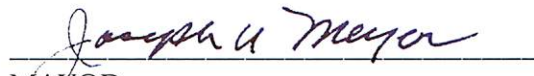
(1) Any party discontinuing use of a facility shall notify the City Manager in writing of such discontinued use within 30 days. Said notice shall describe the facilities for which the use is to be discontinued and include a statement as to whether the registrant intends to leave the facilities in place for potential future use, remove the facilities or abandon the facilities in place. The registrant shall remain responsible for the maintenance, repair and condition of discontinued facilities at all times.

(2) The City Manager may order that the responsible party remove, replace or repair any discontinued facility which significantly interferes with the city's maintenance of the right-of-way.

(1984 Code, § 96.42) (Ord. O-04-20, passed 1-28-2020)

Section 2

That this order shall take effect and be in full force when passed and recorded according to law.


MAYOR

ATTEST:


CITY CLERK

Passed: December 20, 2022 (Second Reading)

November 29, 2022 (First Reading)